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From: Stein, Mark
Sent: Tue 3/4/2014 5:38:00 PM
Subject: FYI - Re CCR Rule

Hi folks - Apropos of today's meeting, I've copied two Inside EPA articles below. The first discusses EPA's recently announced plan to issue the Final CCR Rule under RCRA by December 19, 2014. The second article discusses EPA's risk evaluation of coal combustion residuals "reuse," which came out "supportive" of certain of such practices.

Article 1:

Daily News

EPA Commits To 2014 Deadline For Completing Long-Delayed Coal Ash Rule

Posted: January 29, 2014

Correction Appended

EPA in a court-ordered plan has agreed to finalize by Dec. 19 its long-delayed rule to regulate coal ash under the Resource Conservation and Recovery Act (RCRA), with industry pushing the agency to classify the material as solid waste under the law while environmentalists seek stricter controls under a hazardous waste listing.

The agency's Jan. 29 consent decree committing to finalize the rule under RCRA subtitle D requirements reserved for solid waste is in response to recent a court order from U.S. District Court for the District of Columbia Judge Reggie Walton, who ordered the agency to come up with a deadline for finalizing the coal ash regulations it first proposed in June 2010.

EPA has indicated in previous statements that it is leaning toward a subtitle D solid waste final rule for coal ash, but one industry source cautions that the consent order only requires the agency to take final action by mid-December on its proposed ash rule. The source notes that EPA has several options for how to proceed, including finalizing a solid waste rule or pursuing the alternative RCRA subtitle C option that it floated in the 2010 proposal.

The settlement was also signed by environmentalists and coal ash recyclers who had sued the

agency for failing to complete the rulemaking, as well as power plant and mining industry officials who will be subject to the final rule. The agreement also appears to limit the parties' abilities to challenge the deadlines and other provisions in the agreement. "Plaintiffs' sole judicial remedy to address the merits of any final agency action taken by EPA pursuant to this Consent Decree is to file a new lawsuit to challenge such final action," the settlement says.

In its 2010 proposed rule, EPA suggested an option for regulating coal ash disposal under subtitle D but also said it could regulate coal ash under a more stringent subtitle C rule that covers hazardous waste.

That prompted major push-back from utility and coal ash recycling officials who worried the hazardous waste label would stigmatize the use of ash in concrete and other products they say are a "beneficial reuse" of coal ash, though some environmentalists say the material contains unacceptably high levels of toxic constituents.

The agency's agreement to the consent decree to complete the rule by the end of the year prompted praise from industry officials, who said it would resolve uncertainty that has plagued coal ash users in the more than three years since EPA proposed the regulations. Thomas Adams, executive director of the American Coal Ash Association, said that finalizing the disposal rule this year will provide momentum to the market, which recyclers have said has been buffeted by uncertainty due to EPA's pending rulemaking.

"Ash users have been waiting for EPA to confirm that it will not reverse more than 30 years of federal policy that ash is a non-hazardous material with numerous beneficial uses. That confirmation is now imminent," Adams said.

Regulatory 'Certainty'

A major user of coal ash, Headwaters Incorporated, also applauded the consent decree for committing to finalize the rule, with company CEO Kirk Benson saying they will "finally achieve regulatory certainty" this year.

EPA's agreement to finish the regulations could also meet a key goal of advocates who say the lax storage of the material in unlined landfills and surface impoundments has created too great of

risks to water quality and safety, though environmentalists have generally urged the agency to finalize the rule under subtitle C, as that would give the agency a greater oversight role over coal ash disposal areas.

Earthjustice and other environmental groups that support a subtitle C ash rule issued a Jan. 30 statement saying, "Now we have certainty that EPA is going to take some action to protect us and all of the hundreds of communities across the country that are being poisoned by coal ash dumps. . . . But this deadline alone is not enough. EPA needs to finalize a federally enforceable rule that will clean up the air and water pollution that threatens people in hundreds of communities across the country."

The statement adds, "Utility companies need to stop dumping ash into unlined pits and start safely disposing of ash in properly designed landfills. Groundwater testing is needed at these ash dumps, data needs to be shared with the public, and power companies must act promptly to clean up their mess. A rule that requires anything less than these common-sense safeguards will leave thousands of people who live near ash dumps in harm's way."

If EPA opts for the subtitle D approach in the final rule, it will require environmentalists to enforce the standards via citizen suits against storage facilities.

EPA's 2010 proposed rule had also included a third, least-stringent option backed by industry known as subtitle D "prime," which would not require some coal ash landfills to close or install liners to reduce coal ash releases because of arguments that they pose a low risk at some existing facilities. It is unclear if EPA could still exercise that option under the consent decree.

EPA's long-awaited schedule for finalizing its coal ash regulations comes as House Republicans on Jan. 9 approved legislation that would eliminate the agency's duty every three years to review, and revise if necessary, its coal ash regulations.

The coal recycling sector has put their support behind the bill, given their fears that lawsuit-driven reviews of coal ash rules every three years would heighten uncertainty around the use of coal combustion materials in concrete and other products. Judge Walton, in an Oct. 29 order, agreed with environmentalists that RCRA mandates a three-year review cycle.

The consent decree does not give any indications about the content of the final rule, including the agency's determinations on what should qualify as a "beneficial reuse" of coal ash, a key point of dispute between industry groups who say coal ash is no more harmful than any other construction material and environmentalists who fear that toxic materials will leach from coal ash if it is widely used.

Recent [EPA-funded studies](#) have found that some "encapsulated" uses of coal ash in materials such as concrete pose low risks of leaching, potentially bolstering industry's claims around the safe uses of the material. -- *Chris Knight* (cknight@iwpnews.com This e-mail address is being protected from spambots. You need JavaScript enabled to view it)

Article 2

Daily News

After Risk Analyses, EPA 'Supports' Coal Ash Reuse in Concrete, Wallboard

Posted: February 7, 2014

An EPA risk evaluation finds that concrete and wallboard made with coal combustion residuals (CCRs) such as coal ash pose no more harm to human health or the environment than the raw components the materials replace, leading the agency to conclude that it "supports" the reuse as it prepares to issue a final coal ash disposal rule by year's end.

EPA Feb. 7 [released](#) its new "Methodology for Evaluating Encapsulated Beneficial Uses of Coal Combustion Residuals" and an accompanying document, "Coal Combustion Residual Beneficial Use Evaluation: Fly Ash Concrete and [flue gas desulfurization (FGD)] Gypsum Wallboard," which applies the new methodology to those practices.

"The protective reuse of coal ash advances sustainability by saving valuable resources, reducing costs, and lessening environmental impacts, including reducing greenhouse gas emissions," Mathy Stanislaus, assistant administrator for EPA's Office of Solid Waste and Emergency Response, said in a Feb. 7 statement.

The [risk evaluation document](#) concludes that "environmental releases of constituents of potential concern (COPCs) from CCR fly ash concrete and FGD gypsum wallboard during use by the consumer are comparable to or lower than those from analogous non-CCR products, or are at or below relevant regulatory and health-based benchmarks for human and ecological receptors."

The [finding echoes](#) that of leach testing by Vanderbilt University researchers, published in the journal *Chemosphere*

in December. Those studies concluded that the use of fly ash to replace Portland cement in concrete "causes minimal to no increases in leaching" of COPCs from concrete samples. EPA and the Electric Power Research Institute funded the research, which is referenced in the agency's new publications.

The new EPA evaluation document adds that "beneficial use of CCRs, when conducted in an environmentally sound manner, can contribute significant environmental and economic benefits." It adds, "Based on the conclusion of the analysis in this document stated above, and the available environmental and economic benefits, EPA supports the beneficial use of coal fly ash in concrete and FGD gypsum in wallboard."

The documents follow EPA's release of a schedule late last month for when the agency will issue its final rule on whether coal ash waste must be disposed as hazardous waste, controlled by subtitle C of the Resource Conservation Recovery Act (RCRA) or as general municipal waste, controlled by RCRA subtitle D.

Since EPA began evaluating coal ash disposal following the collapse of a Tennessee Valley Authority coal ash containment pond in late 2009, coal ash recyclers have protested that the stigma of the product being considered hazardous waste, and the resulting regulatory uncertainty from the long-stalled rulemaking process, have depressed their industry.

EPA notes that the new risk evaluation methodology is "voluntary, not regulatory, and is not a replacement for existing requirements for beneficial use determinations."

Still, recyclers are "applauding" the release of the agency's new documents.

"We appreciate EPA's effort in conducting this thorough evaluation of the safety of coal ash use," Thomas Adams, executive director of the American Coal Ash Association, said in a Feb. 7 statement. "This study reconfirms what we have learned through decades of successful beneficial use. Coal ash use is safe and should be encouraged."

The industry group notes that EPA in its response to the court "strongly signaled that those rules will avoid any 'hazardous waste' designation" and adds that the industry will use "this positive information to promote increased utilization of these strategic resources."

The reuse practice, however, has long concerned environmentalists and green building groups because coal ash contains COPCs such as arsenic, cadmium, chromium, lead and others. They have pressed for assessments of whether these constituents can somehow escape these encapsulated uses, and also have pressed for rules regarding how the materials are addressed when disposed of or demolished.

EPA's positive conclusions on CCR reuse in concrete and wallboard is based on its evaluation, using the new methodology. Assessors considered four potential pathways through which COPCs might be released from concrete or wallboard during their use by consumers: dust generation, "emanation to air," leaching into water sources and radioactive decay. EPA indicates that it relied on existing research to determine that it only needed to analyze emanation to air for wallboard re-use and could eliminate radioactive decay from its analysis of concrete.

The evaluation, however, adds the caveat that it "only addressed those products that meet relevant physical and performance standards established by voluntary consensus standard bodies;" that contain no more than 40 percent fly ash "and that incorporate fly ash and FGD gypsum from common pollution control devices used in the United States. This evaluation also did not address products that contain additional additives or industrial materials that may alter releases from the products." -- Maria Hegstad (mhegstad@iwpnews.com *This e-mail address is being protected from spambots. You need JavaScript enabled to view it*)

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